

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13033 of 1993

To

SPECIAL CIVIL APPLICATION NO.13106 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 & 2 Yes : 3 to 5 No
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SURAT MUNICIPAL CORPORATION

Versus

BARODA RAYON CORPORATION

Appearance:

Special Civil Application Nos.13033 to 13106 of 1993

MR PRASHANT G DESAI with Mr.M.K.Purohit
for Surat Municipal Corporation
Mr.Devang S.Nanavati with Mr.S.D.Dave for
NANAVATI & NANAVATI for Respondents

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

Date of decision: 14/09/98

COMMON ORAL JUDGEMENT (Per M.R.Calla,J)

1. All these Special Civil Applications are based on identical facts involving common questions of law between

the Surat Municipal Corporation and the respondents and, therefore, all these 74 Special Civil Applications are decided by this common judgment and order.

2. The Municipal Corporation, Surat made the assessment of the property tax with regard to the properties of the respondents - Companies for the years 1986-87 onwards and for the assessment years 1989-90, the first assessment order being dated 28.8.87 came to be passed as has been given out by Mr.P.G.Desai. This assessment was challenged by the Companies by way of filing Appeals under S.406 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as the 'BPMC Act') without depositing the amount of the tax, which was assessed as due tax. These Appeals were considered by the Civil Judge (S.D.) Surat. The respondents - Companies then preferred Applications to admit the Appeals, not to dismiss the same and not to issue any direction for depositing the amount of tax, which had been assessed by the Municipal Corporation. These Applications were filed in the year 1990 and the Civil Judge (S.D.), Surat considered the Applications, which had been filed virtually seeking exemption from depositing the amount and to entertain the Appeals. These Applications were considered in detail with reference to the relevant provisions of the BPMC Act and for the reasons given in the order dated 21.6.90, the learned Civil Judge (SD), Surat dismissed all the Applications and on the same day by a separate order dated 21.6.90 he also dismissed the Municipal Valuation Appeals on the ground that the Appeals had been filed without depositing the amount with the Commissioner and as such the same were not entertainable.

3. Against these orders dated 21.6.90 Regular Appeals were preferred before the Extra Assistant Judge, Surat and the same were decided by a common judgment and order dated 30.9.93 by the Extra Assistant Judge, Surat whereby the orders passed by the Civil Judge (SD), Surat on 21.6.90 were set aside and the matters were remanded back to the lower Court for deciding the Appeals on merits in accordance with law and the parties were directed to remain present before the lower Court on 25.11.93. Against this order dated 30.9.93 the Surat Municipal Corporation has preferred these Special Civil Applications challenging the impugned order dated 30.9.93 in each of the 74 matters.

4. Mr.Desai, the learned counsel appearing for the Surat Municipal Corporation, has argued the case with reference to the provisions of S.406(2) of the BPMC Act

and has submitted that in view of S.406(2) unless the amount of the tax is deposited, no Appeal can be entertained. According to him the deposit of the due amount of the tax is a condition precedent and a pre-requisite for entertaining an Appeal and that in case any party facing undue hardship seeks to get out of this condition, on the application of such party, the Court may in its discretion unconditionally or subject to conditions, which the Court thinks fit to impose, dispense with only a part of the amount and that too not exceeding 25% of the amount required to be deposited. S.406 of the BPMC Act is reproduced as under for ready reference:-

"406. Appeals when and to whom to lie.- Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this act shall be heard and determined by the Judge.

(2) No such appeal shall be entertained unless-

(a) it is brought within fifteen days after the accrual of the cause of complaint;

(b) in the case of an appeal against a rateable value a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of;

(c) in the case of an appeal against any tax in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of;

(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within fifteen days after he first received notice of such amendment and his complaint has been disposed of;

(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value, the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value upto the date of filing the appeal, has been deposited by the appellant with the

Commissioner.

Provided that where in any particular case the Judge is of the opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion, either unconditionally or subject to such conditions as he may think fit to impose, dispense with a part of the amount deposited so however that the part of the amount so dispensed with shall not exceed twenty five percent of the amount deposited or required to be deposited."

5. The Legislative history of this S.406 shows that earlier under sub-section (2) the words used were, "No such appeal shall be heard unlessss.....". The words, "shall be heard" were then substituted by the words, "shall be entertained" by the amendment by Gujarat 5 of 1970 S.10(2). The Civil Judge (S.D.), Surat while passing the order dated 21.6.90 rejecting the Applications and Appeals took the view that any party desirous to prefer the Municipal Valuation Appeal under S.406 of BPMC Act is bound to comply with the requirements under S.406 wherein depositing of the amount has been made compulsory at the time of filing the Appeal. He did not find any good ground in the Applications, which were moved by the Companies, for entertaining and admitting the Appeals and accordingly he dismissed all the Applications and consequently the Appeals by his two separate orders dated 21.6.90. The Extra Assistant Judge at Surat while deciding the Regular Civil Appeals against the order dated 21.6.90 passed by the Civil Judge (SD) at Surat has set aside the aforesaid orders dated 21.6.90. He has taken the view that the Appeals in such cases may be filed but the same cannot be entertained unless the due amount of the tax is deposited as required under the provisions of S.406 of the BPMC Act. The learned Extra Assistant Judge has made a distinction with reference to the words, 'entertained', 'filed' and 'lies' and after considering the cases, which were cited before him, and after considering the provisions of S.406, he has come to the conclusion that if the words, "No such appeals shall be entertained", are read to mean that, "No such Appeal shall be filed" the question of the exercise of the discretion under S.406(2)(e) would not even arise; whereas such discretion has been provided in the language of the Section itself. He has also taken into consideration that the statutory right of preferring the Appeal cannot be made to be illusory by reading the language of S.406 in the manner as it has been interpreted while rejecting the

Applications by the orders dated 21.6.90 by the Civil Judge (SD) at Surat. Mr. Desai on behalf of the Surat Municipal Corporation has assailed this view taken by the Extra Assistant Judge, Surat.

6. We have heard learned counsel at length. We find that the provisions of S.406, cannot be read in isolation and out of context. The Section, which provides the remedy of statutory Appeal, has to be read in continuity and all the provisions contained in the Section have to be read as an integral part of the right to institute Appeal. In case such statutory taxation valuation Appeals are made to be heard without depositing the due amount of tax, the whole object and the purpose of the assessment and the recovery of the tax shall stand frustrated and it would become very difficult for the local self Government bodies like the Municipal Corporations to function and to undertake other developmental activities as a part of its duty. To take care of such a situation, the Legislature thought it proper that a balance be struck between the objects and the functions of the Corporation seeking the property tax from the concerned assesseees as also the property owners to exercise their right to Appeal so as to contest the assessments made by the Municipal Corporation and, therefore, the amendment was made so as to insert the words "shall be entertained" in place of "shall be heard". The result is that under the amended provisions, the right to Appeal can be exercised inasmuch as the Appeal can be entertained even if the whole amount is not deposited and a part of it is deposited as per the orders of the appellate court in terms of the proviso under S.406(2)(e) which is reproduced as under:-

"Provided that where in any particular case the judge is of the opinion that the deposit of the amount by the appellant will cause undue hardship to him, the judge may in his discretion, either unconditionally or subject to such conditions as he may think fit to impose, dispense with a part of the amount deposited so however that the part of the amount so dispensed with shall not exceed twenty five percent of the amount deposited or required to be deposited."

It was never the intention of the Legislature to make the right of Appeal defeasible in absence of the deposit of the total amount and even when the words used in Section was "shall be heard", it was never intended that this right to Appeal could be availed only after depositing the whole amount, which had been assessed as

the due tax. The very fact that it is provided under proviso to S.406(2)(e) that the Judge may in his discretion either unconditionally or subject to such conditions, as he may think fit to impose, dispense with the part of the amount deposited so however that the part of the amount so dispensed with shall not exceed 25% of the amount deposited or required to be deposited clearly goes to show that the Appellate Court may consider undue hardship in a given case and then order to entertain the appeal on the condition which it thinks fit to impose- as above and it also shows that the deposit of the amount is not to be treated as a condition precedent or pre-requisite for the purpose of entertaining the Appeal, and, therefore, the Appeal can be entertained even if the amount has not been deposited, subject to the rider that it shall not be finally heard and disposed of nor the question of the stay of the recovery of the due amount of tax shall be considered unless the amount is deposited either wholly or in part as per the conditions, which may be imposed by the Court, as provided in proviso to S.406(2)(e). This question need not detain us any more from proceeding further because the question is no more res integra in view of the law laid down by the Supreme Court in the case of Shyam Kishore v. Municipal Corporation of Delhi, reported in AIR 1992 SC 2279, wherein the Supreme Court while dealing with identical provisions under the Delhi Municipal Corporations Act had categorically held in the matter of levy of property tax that Appeal can be admitted or entertained but it only can not be heard and disposed of without pre-deposit of disputed tax and further that the Appellate Authority can adjourn the hearing of Appeal for giving time to deposit the tax, but it cannot stay the recovery of the tax till the disposal of the Appeal. The Supreme Court was concerned with S.170 of Delhi Municipal Corporations Act and it has observed that S.170 uses three different expressions "heard or determined", "brought" and "admitted" in relation to an Appeal and some significance is to be attached to the use of the expression "heard and determined". Referring to comparison between the language of S.170(a) and 170 (b) the Supreme Court has observed that the absence of a language in clause (b) of the proviso similar to that in clause (a) which indicates that an appeal filed beyond the period of limitation will not stand admitted unless the delay is condoned - also warrants an inference that the payment of disputed tax is not a condition precedent to the entertainment or admission of the Appeal. In the present statutory context, it sounds plausible to say that such an appeal can be admitted or entertained but only cannot be heard or disposed of without pre-deposit of the disputed tax.

So far as the reasons for taking the view, which we have taken in these cases, are concerned, we cannot do better than what has been expressed by the Supreme Court itself in this case of Shyam Kishore (Supra). The relevant observations are quoted as under:-

"These are not days in which the calculation of the property tax is simple and uncomplicated; the determination of the annual value of the property, except when based on the actual rent received from the property, involves various subjective factors and, not unoften, there is a wide gulf between the tax admitted to be due and the tax demanded. Sometimes, to compel the assessee to pay up the demanded tax for several years in succession might very well cripple him altogether. This apart, an assessee may not be able to deposit the tax while filing the appeal but may be able to pay it up within a short time, or at any rate, before the appeal comes on for hearing in the normal course. There is no reason to construe the provisions so rigidly as to disable him from doing this."

7. We, therefore, hold that the direction given by the Extra Assistant Judge in his order dated 30.9.93 setting aside the order passed by the Civil Judge (SD) at Surat does not warrant any interference.

8. So far as the relevant part of the direction in remanding the matter back to the lower court for deciding the Appeals on merits in accordance with law is concerned, Mr. Devang appearing for the respondents has invited our attention to the mention made in para 22 of the impugned judgment dated 30.9.93 wherein the Court has noticed that as per the directions of the High Court issued on 18.3.91 in Special Civil Application No.14430 of 1990, wherein the assessment itself was challenged, the Companies were directed to deposit the tax and for that purpose the High Court had granted time upto 17.5.91. The High Court granted opportunity to the Companies for depositing the tax so that their statutory right of Appeal is not rendered defeasible. Mr. Devang has further pointed out that the due amount of tax, as a whole, has been deposited by the respondents - Companies to the Surat Municipal Corporation with regard to all the properties, which are concerned in these batch of Special Civil Applications. Now that the factual position is that the due amount of tax has already been deposited and when it has been held that the amount could be deposited even after the institution of the Appeals, there could not be

any legal impediment now for the purpose of taking up all these Appeals on merits in accordance with law and, therefore, we also do not find any infirmity in the other direction for deciding the appeals on merits, as has been given by the Extra Assistant Judge while passing the impugned order dated 30.9.93.

9. For the reasons, as aforesaid, we do not find any infirmity in the impugned order dated 30.9.93 passed by the Extra Assistant Judge, Surat in the Regular Civil Appeals as a common order between the parties and there being no force in these Special Civil Applications, all these 74 Special Civil Applications are hereby dismissed. Rule issued in each of them is hereby discharged. Interim orders stand automatically vacated. No order as to costs.